
1999 Wis Eth Bd 11
IMPROPER USE OF OFFICE; MEALS, LODGING, TRAVEL AND
ENTERTAINMENT

The Ethics Board advises:

The responsibility for the care and use of grant funds lies in the first instance and primarily with the state agency that receives a grant. The agency's officials have broad discretion to identify the agency's interests and the means to further those interests.

1. State public officials. An agency's state public officials should strive to assure that the agency's expenditures related to an out-of-state event are not for their own personal advantage except to the extent any personal advantage is merely incidental to the officials' specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency, in contrast, for example, to expenditures for undefined or ill-defined or tenuously related "representational" responsibilities.
2. Spouses, companions, and family members. With rare exception, the public purpose doctrine and §§19.45 and 19.46, *Wisconsin Statutes*, foreclose officials from authorizing the travel of their spouses and other family members to events at state expense, even if the source of the public funds is a grant rather than taxes. An expenditure for this purpose merits close scrutiny.
3. Others. Because officials subject to the Ethics Code may not use their positions to obtain unlawful benefits for others, the Ethics Board encourages them not to authorize the payment of expense for travel for employees, employees' spouses, and others except as those expenses are in connection with specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency.

Facts

¶1 This opinion is based upon these understandings:

- a. You write on behalf of a state agency of which you are legal counsel.
- b. The agency has received a grant of money.
- c. The agency wants to use at least some of the money to cover the expenses of travel to an out-of-state event in which some agency personnel are involved.

Question

¶2 The Ethics Board understands your question to be:

What restrictions do laws administered by the Ethics Board place on the agency's use of the grant money for travel expenses?

Discussion

¶3 Jurisdiction. The Ethics Code is designed to apply to the key state government officials who make and execute the policies of a state government body. The statutes we administer do not apply to most employees of state agencies.

¶4 Discretion; its scope and limits. The responsibility for stewardship of the grant monies that the agency will receive for participating in the out-of-state event lies in the first instance and primarily with the agency. The agency's discretion in spending these funds is broad but not absolute. There are constitutional and statutory limits to that discretion because the agency's payment of event-related travel costs involves public funds.

¶5 Public funds. You have advised us that the grant that the agency receives for participating in the event, although not derived from taxes, nevertheless becomes public money when the agency accepts the grant. We accept your characterization:

The grant is thus similar to any grant: upon receipt, grant monies become public funds, subject to the normal limitations under Wisconsin law although it is expected that they will be spent in a manner consistent with the grant's original terms.

¶6 Bolstering the characterization of the grant as public funds is your observation:

If the full expense allocation provided for attendance at the event were not used to defray the costs of attendance, these funds would be available for use along with other funds appropriated to the agency.

¶7 Constitutional considerations. State funds may not be spent in violation of constitutional restrictions. The "public purpose doctrine" requires that public funds be spent for public as opposed to private purposes.¹ The

¹ See, e.g., *Wisconsin Solid Waste Recycling Authority v. Earl*, 70 Wis.2d 464 (1975); *City of West Allis v. Milwaukee County*, 39 Wis.2d 356, *cert denied*, 393 U.S. 1064 (1968); *State ex rel. La Follette v. Rueter*, 36 Wis.2d 96 (1967); *State ex rel. American Legion 1941 Convention Corporation of Milwaukee v. Smith*, 235 Wis. 443 (1940); *State ex rel. Wisconsin Development Authority v. Dammann*, 228 Wis. 147 (1938); 72 Op. Att'y Gen. 172 (1983); 66 Op. Att'y Gen. 43 (1977); 1970 Wis. L. Review 1113.

attorney general has noted that what is a public purpose is ordinarily left to the legislature, which has broad discretion to determine what is and what is not a public purpose.² One scholar has noted that although an expenditure benefiting only certain individuals does not rob an expenditure of its public purpose, incidental benefits to the public cannot justify expenditure of public funds.³

¶8 Statutory considerations. The most pertinent of the statutory restraints⁴ we administer is found at §19.45(3m), *Wisconsin Statutes*. It provides:

19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food, or beverage, or reimbursement therefor, except in accordance with s. 19.56 (3).

¶9 The exception to which it alludes excepts a state public official's receipt of transportation, lodging, meals, *et cetera* as long as the official BOTH [1] receives those items from the State of Wisconsin AND [2] can show clearly and convincingly that they were received primarily for the benefit of the state and not primarily for a private benefit of the official or another.⁵

² 66 Op. Att'y Gen. 43 (1977)

³ William F. Eich, *A New Look at the Internal Improvements and Public Purpose Rules*, 1970 Wis. L. Review 1113, 1115-1116.

⁴ Other pertinent provisions unnecessary for us to discuss here include:

19.45(2) No state public official may use his or her public position or office to obtain financial gain . . . for the private benefit of himself or herself or his or her immediate family

19.45(5) No state public official may use or attempt to use the public position held by the public official to influence or gain unlawful benefits, advantages or privileges personally or for others.

19.46(1) Except in accordance with the [ethics] board's advice . . . no state public official may:

(1)(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official [or for] one or more members of the official's immediate family §19.46(1)(b), *Wisconsin Statutes*.

When advising another state official the attorney general has noted with reference to the Ethics Code, "I take the thrust of these sections to be to prohibit the use of state monies for personal, family, or business purposes unrelated to the functions of your office." 66 Op. Att'y Gen. 43, 49 (1977)

⁵ §19.56(3)(c), *Stats.*, provides:

19.56(3) Notwithstanding s. 19.45:

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

¶10 Your letter of inquiry establishes that the first part of the test is met, namely that the payments from the grant are from the State of Wisconsin. How can the agency demonstrate that the second part of the test is met? To clearly and convincingly demonstrate that expenses associated with a person's travel to the out-of-state event are primarily for the benefit of the state, we recommend that the agency be able to demonstrate that the costs are incurred in connection with the officials' specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency.

¶11 Having identified the pertinent constitutional and statutory considerations, we have taken up your question first with respect to state public officials' actions as they affect themselves, then as they affect their own families, and finally as their actions affect others.

Travel by state public officials.

¶12 State public officials should not permit the agency to pay any portion of the travel or lodging expenses associated with their attendance at the event except as the agency incurs those costs in connection with the officials' specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency. We recommend that they not accept payment of expenses for undefined or ill-defined or tenuously related "representational" responsibilities.

Travel by spouses, companions, and family members.

¶13 It will be difficult to demonstrate that payment for a spouse's or other family member's attendance is primarily for the benefit of the state of Wisconsin and not a private benefit.⁶ An expenditure for this purpose merits close scrutiny. With rare exception, spouses may not participate in state travel at state expense, even if the source of the public funds is a grant rather than taxes. Ultimately, the test will be whether the costs the agency incurs for travel by an official's spouse is in connection with the spouse's specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency.⁷

Travel by others.

¶14 As earlier mentioned, the statutes we administer apply only to state public officials and not to other employees of the agency. Nevertheless, because the agency's public officials subject to the Ethics Code may not use their positions to obtain unlawful benefits⁸ for others, we encourage them not

⁶ 1998 Wis Eth Bd 10, ¶5.

⁷ Many state agencies have occasions to send employees on business related travel, often for extended periods. We think it is well established within the framework of state government that the state of Wisconsin will not, except in the rarest of circumstances, pay for travel by the employee's spouse and then only when a substantial public purpose is clearly articulated.

⁸ §19.45(5), *Stats.*, *supra*.

to authorize the payment of expense for travel for employees, employees' spouses, and others except as those expenses are in connection with their specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency.

¶15 The agency's payment of the expenses of an official or employee assigned event-related responsibilities should ordinarily meet the public purpose test. Providing travel to the event for a purpose only tenuously related to a public objective or for an insubstantial purpose such as an agency official's attendance for nonspecific interactions with other attendees would ordinarily fail the public purpose test. Moreover, the agency should not provide travel, lodging, or benefits as a "perk" or compensation outside appropriately established compensation plans.

Advice

¶16 The responsibility for the care and use of the grant funds lies in the first instance and primarily with the agency. The agency's officials have broad discretion to identify the agency's interests and the means to further those interests.

1. State public officials. The agency's state public officials should strive to assure that the agency's expenditures related to the out-of-state event are not for their own personal advantage except to the extent any personal advantage is merely incidental to the officials' specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency, in contrast, for example, to expenditures for undefined or ill-defined or tenuously related "representational" responsibilities.
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3. Others. Because the officials subject to the Ethics Code may not use their positions to obtain unlawful benefits for others, we encourage them not to authorize the payment of expense for travel for employees, employees' spouses, and others except as those expenses are in connection with their specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency.